

Muriel B. Kaplan, Esq. (SBN 124607)
Michele R. Stafford, Esq. (SBN 172509)
Shaamini A. Babu, Esq. (SBN 230704)
SALTZMAN & JOHNSON LAW CORPORATION
44 Montgomery Street, Suite 2110
San Francisco, CA 94104
(415) 882-7900
(415) 882-9287 – Facsimile
mkaplan@sjlawcorp.com
mstafford@sjlawcorp.com
sbabu@sjlawcorp.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

BAY AREA PAINTERS AND TAPERS
PENSION TRUST FUND, et al.

Plaintiffs,
v.

DE MARTINEZ PAINTING, INC., a California
Corporation,
Defendant.

Case No.: C09-3098 MMC

**NOTICE AND ACKNOWLEDGMENT
and JUDGMENT PURSUANT TO
STIPULATION**

IT IS HEREBY STIPULATED by and between the parties hereto, that Judgment may be entered in the within action in favor of the Plaintiffs BAY AREA PAINTERS AND TAPERS PENSION TRUST FUND, et al. (collectively "Plaintiffs" or "Trust Funds") and against Defendant DE MARTINEZ PAINTING, INC., a California Corporation, or successor entities; ("Defendant"), as follows:

1. Defendant entered into a valid Collective Bargaining Agreement with the District Council 16 of the International Union of Painters and Allied Trades (hereinafter "Bargaining Agreement"). This Bargaining Agreement has continued in full force and effect to the present time.

2. Daniel Edward Martinez, RMO/CEO/President of Defendant De Martinez Painting, Inc., hereby acknowledges that he is authorized to receive service and has received the following documents in this action: Summons; Complaint; Dispute Resolution Procedures in the Northern

District of California; Order Setting Initial Case Management Conference and ADR Deadlines; Case Management Conference Order; Standing Orders for Civil Cases Assigned to the Honorable Maxine M. Chesney; Standing Order for All Judges of the Northern District of California; Instructions for Completion of ADR Forms Regarding Selection of an ADR Process; Stipulation and [Proposed Order] Selecting ADR Process; Notice of Need for ADR Phone Conference; ADR Certification by Parties and Counsel; Notice of Availability of Magistrate Judge to Exercise Jurisdiction; Consenting to a Magistrate Judge's Jurisdiction in the Northern District of California; ECF Registration Information Handout; Welcome to the U.S. District Court, San Francisco, and Certification of Interested Entities or Persons Pursuant to Civil Local Rule 3-16.

3. Defendant has become indebted to the Trust Funds as follows:

April 2009	Contributions	\$27,086.50	
	20% Liquidated Damages	\$5,417.30	
	5% Interest (through 7/22/09)	\$192.94	
			\$32,696.74
May 2009	Contributions	\$27,125.13	
	20% Liquidated Damages	\$5,425.03	
	5% Interest (through 7/22/09)	\$81.75	
			\$32,631.91
June 2009	Contributions	\$18,817.30	
	20% Liquidated Damages	\$3,763.46	
			\$22,580.76
SUBTOTAL			\$87,909.41
Attorneys' Fees (through 7/21/09)			\$933.50
Cost of Suit			\$350.00
TOTAL DUE			\$89,192.91

4. Defendant shall *conditionally* pay the amount of **\$74,587.12**, representing all above amounts, less liquidated damages in the amount of **\$14,605.79** *conditioned upon timely compliance with all of the terms of this Stipulation*, as follows:

(a) On or before July 25, 2009, and no later than the 25th day of each month thereafter for a period of nine (9) months, through and including March 25, 2010, Defendant shall pay to Plaintiffs the amount of **\$10,000.00**;

1 (b) Prior to Defendant's March 25, 2010 payment, Plaintiffs shall advise
2 Defendant of the actual balance due to Plaintiffs under the terms herein, and the balance shall be
3 paid on March 25, 2010;

4 (c) These payments may be made by joint check to Defendant and Plaintiffs'
5 Trust Funds, and if so, shall be endorsed prior to submission;

6 (d) Defendant shall have the right to increase the monthly payments at any
7 time;

8 (e) Payments shall be applied first to unpaid interest and then to unpaid
9 principal. The unpaid principal balance shall bear interest at the rate of 5% per annum in
10 accordance with Plaintiffs' Trust Agreements;

11 (f) Payments shall be made payable to the "*Bay Area Painters and Tapers*
12 *Trust Funds*" and delivered to Muriel B. Kaplan at Saltzman & Johnson Law Corporation, 44
13 Montgomery Street, Suite 2110, San Francisco, California 94104, **to be received on or before**
14 **the 25th day of each month**, or to such other address as may be specified by Plaintiffs.

15 5. Daniel Edward Martinez acknowledges that he is the RMO/CEO/President of DE
16 MARTINEZ PAINTING, INC., and that he specifically consents to the Court's jurisdiction, as
17 well as the use of a Magistrate Judge for all proceedings herein. Mr. Martinez (hereinafter
18 "Guarantor") confirms that he is personally guaranteeing the amounts due pursuant to the terms of
19 this Stipulation and further acknowledges that all affiliates, related entities and successors in
20 interest to DE MARTINEZ PAINTING, INC. shall also be bound by the terms of this Stipulation
21 as Guarantors, and also consent to this Court's jurisdiction as well as the use of a Magistrate
22 Judge.

23 6. For any work performed by employees of Defendant, beginning with hours worked
24 by Defendant's employees, if any, during the month of July 2009, Defendant/Guarantor shall
25 timely pay contributions, which are due on August 15, 2009, and delinquent if not received by
26 August 31, 2009. For every month thereafter during the stipulated payment term herein,
27 Defendant/Guarantor will remain current in contributions and all other obligations due to Plaintiffs
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1 under the terms of the Collective Bargaining Agreement by timely submitting monthly reports and
 2 contributions to the Trust Funds. **A copy of the contribution report and payment check must**
 3 **be faxed timely to Muriel B. Kaplan at 415-882-9287.**

4 7. Failure by Defendant/Guarantor to remain current in reporting or payment of
 5 contributions shall constitute a default of the obligations under this agreement and the provisions
 6 of ¶9 shall apply. Any such unpaid or late paid contributions, together with 10% liquidated
 7 damages, and 5% per annum interest accrued on the contributions, shall be added to and become a
 8 part of this Judgment and subject to the terms herein. Plaintiffs reserve all rights available under
 9 the applicable Bargaining Agreement and Declarations of Trust of the Trust Funds for collection
 10 of current and future contributions, and for any additional past contributions not included herein as
 11 may be determined by Plaintiffs, pursuant to employee timecards or paystubs, by audit, or other
 12 means, and the provisions of this agreement are in addition thereto. Defendant/Guarantor
 13 specifically waives the defense of the doctrine of res judicata as to any such additional amounts
 14 determined as due.

15 8. In the event that Defendant/Guarantor fails to make any payment referenced herein
 16 in a timely manner as required, or if payment is made and fails to clear the bank, or is unable to be
 17 negotiated for any reason, Defendant/Guarantor shall be considered to be in default of this
 18 Stipulation.

19 9. In the event of a default, Plaintiffs will provide Defendant/Guarantor with written
 20 notice of the default, allowing seven (7) days from the date of the notice in which to cure the
 21 default. All future payments shall be made by cashier's check if the default was caused by a failed
 22 check. In the event that a default is not timely cured, the following will occur:

23 (a) The entire balance of **\$89,192.91** as specified in paragraph 3, plus interest
 24 as specified above, but reduced by principal payments received from Defendant/Guarantor, in
 25 addition to any unpaid contributions then due plus 10% liquidated damages and 5% per annum
 26 interest thereon, shall be immediately due and payable, together with any additional attorneys'
 27 fees and costs incurred in this matter;

1 (b) A writ of execution may be obtained against Defendant/Guarantor without
2 notice in the amount of the unpaid balance, plus any additional amounts under the terms herein,
3 upon declaration by a duly authorized representative of the Plaintiffs setting forth any payment
4 theretofore made by or on behalf of Defendant/Guarantor and the balance due and owing as of the
5 date of default. Defendant/Guarantor specifically consents to the authority of a Magistrate Judge
6 for all proceedings, including, but not limited to, Plaintiffs' obtaining a writ of execution herein;

7 (c) Defendant/Guarantor expressly waives all rights to stay of execution and
8 appeal. The declaration or affidavit of a duly authorized representative of Plaintiffs as to the
9 balance due and owing as of the date of default shall be sufficient to secure entry of Judgment
10 without a noticed motion, and the issuance of a Writ of Execution thereon;

11 (d) Defendant/Guarantor shall pay all additional costs and attorneys' fees
12 incurred by Plaintiffs in connection with collection and allocation of the amounts owed to
13 Plaintiffs under this Stipulation regardless of whether or not Defendant/Guarantor defaults herein.

14 10. In the event of the filing of a bankruptcy petition by the Defendant/Guarantor, the
15 parties agree that any payments made pursuant to the terms of this Judgment, shall be deemed to
16 have been made in the ordinary course of business as provided under 11 U.S.C. Section 547(c)(2)
17 and shall not be claimed by Defendant/Guarantor as a preference under 11 U.S.C. Section 547 or
18 otherwise. Defendant/Guarantor nevertheless represents that no bankruptcy filing is anticipated.

19 11. Any failure on the part of the Plaintiffs to take any action against
20 Defendant/Guarantor as provided herein in the event of any breach of the provisions of this
21 Stipulation shall not be deemed a waiver of any subsequent breach by the Defendant/Guarantor of
22 any provisions herein.

23 12. Should any provision of this Stipulation be declared or determined by any court of
24 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
25 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said
26 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this
27 Stipulation.

1 13. This Stipulation is limited to the agreement between the parties with respect to the
2 delinquent contributions and related sums enumerated herein, owed by Defendant/Guarantor to the
3 Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.
4 Defendant/Guarantor acknowledges that the Plaintiffs expressly reserve their right to pursue
5 withdrawal liability claims, if any, against Defendant/Guarantor as provided by the Plaintiffs' Plan
6 Documents, Trust Agreements incorporated into their Collective Bargaining Agreement, and the
7 law.

8 14. All parties represent and warrant that they have had the opportunity to be or have
9 been represented by counsel of their own choosing in connection with entering this Stipulation
10 under the terms and conditions set forth herein, and that they enter into this Stipulation voluntarily.

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